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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

BRIAN CHAVEZ and BRANDON  
BRACAMONTE, on behalf of  
themselves and all others similarly  
situated,

*Plaintiffs,*

v.

COUNTY OF SANTA CLARA,

*Defendant.*

Case No. 1:15-cv-05277-RMI

**CLASS ACTION**

**PLAINTIFFS' NOTICE OF MOTION  
AND UNOPPOSED MOTION FOR  
ATTORNEYS' FEES AND EXPENSES**

Date: February 27, 2019  
Time: 10:00 AM  
Place: Courtroom 14  
450 Golden Gate Avenue  
San Francisco, California

Magistrate Judge Robert M. Illman

1 **TO DEFENDANTS AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE THAT Plaintiffs move this Court pursuant to Federal  
3 Rule of Civil Procedure 23(h) for an order awarding Plaintiffs' counsel attorneys' fees  
4 and costs. This unopposed Motion is supported by the record before the Court, the  
5 following Memorandum of Points and Authorities, and the accompanying Declarations  
6 of Donald Specter ("Specter Decl."), Jessica Valenzuela Santamaria ("Santamaria  
7 Decl."), and Kendall Dawson Wasley ("Wasley Decl.").

8 Plaintiffs respectfully request that the Court set this matter for hearing at the same  
9 date and time as the fairness hearing, set for February 27, 2019 at 10:00 a.m. (Doc. # 77,  
10 #78).

11  
12 Dated: December 14, 2018

COOLEY LLP

13  
14 /s/ Jessica Valenzuela Santamaria

15 JESSICA VALENZUELA SANTAMARIA  
(220934)

16 ADDISON M. LITTON (305374)  
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18 *Attorneys for Plaintiffs*  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Defendants have agreed to pay Plaintiffs’ attorneys’ merits fees and out-of-pocket expenses in the amount of \$1,600,000. This amount — which reimburses Plaintiffs’ counsel for some but not all of their actual hours spent and out-of-pocket expenses — is fair and reasonable in light of the results obtained through this litigation, the lengthy and detailed settlement negotiations over the course of three years, and the difficulty and complexity of the issues involved.

In this case, Plaintiffs sought to address deficiencies in medical, mental health, and dental care provided to individuals in Defendant’s jails, as well as the use of solitary confinement in the jails, discrimination against people with non-mobility disabilities, and the use of force against individuals in the jails. The Consent Decree does just that. It includes a 46-page Remedial Plan that requires Defendant to implement specific policies, procedures, and practices intended to ensure minimally adequate healthcare and to guarantee that people with non-mobility disabilities receive reasonable accommodations. It also includes a use of force policy and detailed requirements governing the use of restrictive housing in Defendant’s jails.

To get to this result, Plaintiffs devoted more than three years to investigating this case, meeting, corresponding with, and interviewing people detained at the jail, reviewing and analyzing healthcare and custody records, inspecting the jail facilities, working with six neutral experts, reviewing policies and procedures, and meeting and negotiating with Defendant. The Parties expended considerable time and resources negotiating the terms of the Consent Decree and Remedial Plan.

The Parties have now settled all claims raised in the action. This Court has granted preliminary approval of the Consent Decree. (Doc. # 77.)

The Consent Decree provides that “Defendant has agreed to pay Plaintiffs’ counsel \$1,600,000 as their reasonable attorney’s fees, costs, and expenses incurred from the date of filing of the Complaint in this action through final court approval of

1 this Consent Decree.” Consent Decree, Doc. # 74, Ex. 1, ¶ 31. The Consent Decree also  
 2 provides that Defendant will pay Plaintiffs’ counsel for their reasonable time and  
 3 expenses relating to monitoring and enforcing the Consent Decree and Remedial Plan,  
 4 in an amount of \$200,000 per year. *Id.*, ¶ 32.

5 Pursuant to Federal Rule of Civil Procedure 23(h), class members must be  
 6 provided with notice and an opportunity to comment on any motion for fees. The parties  
 7 have agreed that this Motion for Attorneys’ Fees and Expenses should be heard at the  
 8 same time as the hearing for final approval of the settlement agreement, currently set  
 9 for February 27, 2019 at 10:00 a.m.

## 10 **II. ARGUMENT**

### 11 **A. The Parties Have Agreed to an Award of Attorneys’ Fees and Costs.**

12 Federal Rule of Civil Procedure 23(h) provides that “[i]n a certified class action,  
 13 the court may award reasonable attorney’s fees and nontaxable costs that are authorized  
 14 by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). The Parties have agreed to  
 15 an award of fees and costs in this case in the amount of \$1,600,000, which represents a  
 16 partial recovery of attorney time actually spent and out-of-pocket expenses actually paid  
 17 by Plaintiffs’ counsel in pursuit of this litigation. Specter Decl., ¶¶ 15-16.

18 Because the fee agreement does not reduce any recovery by the Class, and  
 19 because there is no evidence of collusion between Plaintiffs’ counsel and Defendant,  
 20 the Parties’ agreement as to attorneys’ fees “is accorded great weight.” *Cox v. Clarus*  
 21 *Mktg. Grp., LLC*, 291 F.R.D. 473, 482 (S.D. Cal. 2013). The Court’s task in evaluating  
 22 a negotiated settlement is “simply to determine whether the negotiated fee is facially  
 23 fair and reasonable.” *Hernandez v. Kovacevich “5” Farms*, No. 1:04-cv-5515, 2005  
 24 WL 2435906, at \*8 (E.D. Cal. Sept. 30, 2005); *see also Officers for Justice v. Civil Serv.*  
 25 *Comm’n of City and Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982) (“[T]he  
 26 court’s intrusion upon what is otherwise a private consensual agreement negotiated  
 27 between the parties . . . must be limited to the extent necessary to reach a reasoned  
 28 judgment that the agreement is not the product of fraud or overreaching by, or collusion

1 between, the negotiating parties, and that the settlement, taken as a whole, is fair,  
 2 reasonable and adequate to all concerned.”) As explained below, the agreed upon fee  
 3 is fair and reasonable, and the Court should enforce the terms of the agreement and  
 4 award Plaintiffs the agreed-upon sum pursuant to Rule 23(h).

5 **B. The Requested Award Is Fair and Appropriate.**

6 Plaintiffs’ request for compensation reasonably reflects the time necessary to  
 7 manage and litigate this case. Courts use the lodestar method for calculating attorneys’  
 8 fees, which consists of multiplying the number of hours reasonably expended on a case  
 9 by a reasonable hourly rate. *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016)  
 10 (citing *Fischer v. SJB–P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000)). To determine  
 11 the appropriate lodestar figure for an attorney’s fees award, the courts consider the  
 12 following factors: (1) the time and labor required; (2) the novelty and difficulty of the  
 13 questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion  
 14 of other employment by the attorney due to acceptance of the case; (5) the customary  
 15 fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client  
 16 or the circumstances; (8) the amount involved and the results obtained; (9) the  
 17 experience, reputation and ability of the attorneys; (10) the “undesirability” of the case;  
 18 (11) the nature and length of the professional relationship with the client; and (12)  
 19 awards in similar cases. *Graves v. Arpaio*, 633 F. Supp. 2d 834, 842 (D. Ariz. 2009)  
 20 *aff’d*, 623 F.3d 1043 (9th Cir. 2010) (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d  
 21 67, 70 (9th Cir. 1975); *see also Hensley v. Eckerhart*, 461 U.S. 424, 430 n.3 (1983)).  
 22 Factors (1) through (4) and (6) are taken into account in either the reasonable hours  
 23 component or the reasonable rate component of the lodestar calculation. Factors (5) and  
 24 (7) through (12) are considered in determining whether to adjust the presumably  
 25 reasonable lodestar figure. *Graves*, 633 F. Supp. 2d at 842 (citing *Morales v. City of*  
 26 *San Rafael*, 96 F.3d 359, 364 n. 9 (9th Cir. 1996)).

27 Factors (1) through (4) and (6) all support Plaintiffs’ request, and factors (5) and  
 28 (7) through (12) show no basis for adjusting the lodestar figure, nor have the Parties

1 requested such adjustment. In light of the “strong presumption that the lodestar figure  
 2 is reasonable,” and courts’ mandates that “adjustments are to be adopted only in  
 3 exceptional cases,” *Oviatt v. Pearce*, 954 F.2d 1470, 1482 (9th Cir. 1992); *Morales*, 96  
 4 F.3d at 363 n. 8 (accord), the requested fee award should be approved.

5 **1. The Agreed-Upon Lodestar Figure is Reasonable.**

6 **a. Time and labor**

7 The fee request reasonably reflects the time and labor required to litigate this  
 8 matter. This is a complex civil rights class action brought on behalf of over three  
 9 thousand people detained in the County’s jails on average day-to-day and all future  
 10 people to be housed in the jails in the future. This action raises serious constitutional  
 11 questions, and will result in fundamental changes to Defendant’s policies, practices, and  
 12 procedures. Specter Decl. ¶ 7. Obtaining this result required review and analysis of  
 13 numerous jail policies and procedures, interviews of scores of people incarcerated at  
 14 the jail, jail inspections, detailed expert analyses, and hours of meetings and  
 15 negotiations. Specter Decl., ¶¶ 4-6.

16 The agreed-upon fee award was calculated pursuant to the lodestar method; that  
 17 is, Plaintiffs’ counsel kept contemporaneous time records that detail all work  
 18 completed, and to calculate the requested award Plaintiffs multiplied the number of  
 19 hours actually worked as of August 2018 by a reasonable hourly rate of \$440 to \$965  
 20 per hour for attorneys and \$250 to \$275 for non-attorneys. Specter Decl., ¶¶ 10, 12-13;  
 21 Santamaria Decl. ¶¶ 4-5; Wasley Decl. ¶¶ 4-5. Though counsel represented the Plaintiffs  
 22 without charge, Plaintiffs’ counsel exercised the same billing judgment and discretion  
 23 accorded to private clients. Specter Decl., ¶ 8; Santamaria Decl. ¶ 4; *Gonzalez v. City*  
 24 *of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013) (“Ultimately, a ‘reasonable’ number  
 25 of hours equals ‘[t]he number of hours . . . [which] could reasonably have been billed  
 26 to a private client.’”) (citations omitted, alterations in original).

27 The requested fee award fairly reflects the time and labor required to litigate this  
 28 complex case, and should be approved.

**b. Novelty and difficulty of the questions**

The requested fee award also fairly reflects the novelty and difficulty of the questions presented. Plaintiffs' claims presented difficult questions of law and fact, including the quality of healthcare required under the Eighth and Fourteenth Amendments, the constitutionality of Defendant's use of restrictive housing and use of force practices, and whether Defendant needed to make systemic and programmatic changes to accommodate people with non-mobility disabilities.

Though not all of the legal principles involved in Plaintiffs' claims were novel, applying them to the class of people in the Santa Clara County jails proved complex. For instance, embedded in these difficult questions is the issue of how Defendant will meet its obligations under federal law within its budgetary and physical plant constraints. Plaintiffs' counsel reasonably expended significant time and resources to address these important issues.

**c. Skill requisite to perform the legal service properly**

Marshaling evidence on a wide range of complex issues and engaging Defendant in settlement negotiations in a case of substantial magnitude required considerable skill. Plaintiffs' counsel are highly experienced in trial practice and both civil rights and general litigation. Counsel from the Prison Law Office specialize in the area of prisoners' rights. Specter Decl., ¶ 2. Counsel from Cooley LLP are also highly experienced in class action litigation, including in the context of prison reform. Santamaria Decl. ¶ 2. Ms. Wasley is an active member of the criminal defense community in Santa Clara County, and her practice includes individual representation of Class members. Wasley Decl. ¶ 2.

The skill of Plaintiffs' counsel is apparent in the results they obtained, including certification of the class, negotiating a detailed and comprehensive Remedial Plan, and ultimately obtaining a settlement that provides the class with considerable benefits. Specter Decl. ¶ 7.



**d. Exclusion of other employment**

Representing the class required a significant investment of attorney time over more than three years. As a result, the attorneys' ability to take on other cases was negatively affected. Specter Decl., ¶ 9; Santamaria Decl. ¶ 7; Wasley Decl. ¶ 7.

**e. Contingency or fixed fee**

Plaintiffs' counsel is not charging class members a fee for their services. Counsels' fees are based purely on the Consent Decree. Specter Decl., ¶ 8.

**f. Out-of-pocket expenses**

The requested award of costs and fees is also reasonable because Plaintiffs' counsel expended almost \$15,000 in out-of-pocket expenses in pursuing this litigation. Specter Decl., ¶ 14; Santamaria Decl. ¶ 9; Wasley Decl. ¶ 6. Such expenses "would normally be charged to a fee paying client." *See Dang v. Cross*, 422 F.3d 800, 814 (9th Cir. 2005).

**2. The Court Need Not Adjust the Agreed-Upon Lodestar Figure.**

The remaining factors not subsumed in the initial lodestar calculation also support the amount of fees sought. First, the Parties faced time limitations to reach agreement on the Consent Decree imposed by the impending trial date in February 2019. Second, the results obtained through the robust Consent Decree are highly favorable to the Class in improving day-to-day conditions at the jails. Specter Decl. ¶ 7. Third, Plaintiffs' counsel are deeply experienced and capable advocates. Specter Decl. ¶ 2; Santamaria Decl. ¶ 2; Wasley Decl. ¶ 2. Fourth, class actions "on behalf of prisoners involving the conditions of confinement are exceedingly fact-intensive, time-consuming, and expensive to litigate" and are therefore "undesirable." *Graves*, 633 F. Supp. 2d at 847. Fifth, Plaintiffs' counsel's relationship with members of the Class, including named Plaintiffs, began more than three years ago. Finally, although the amount of fee awards granted in prison and jail class actions widely vary based on the scope of the remedies and the duration of each respective case, as stated above, the hourly fee sought is consistent with the market rate paid in other cases. Specter Decl.



¶ 11.

In light of all of the above, the agreed-upon fees should be granted in the amount requested by Plaintiffs and agreed upon by the Parties.

### III. CONCLUSION

The agreed-upon fee award is fair and reasonable. Accordingly, Plaintiffs' respectfully request that the Court issue an order awarding Plaintiffs \$1,600,000 in fees and costs and \$200,000 per year for monitoring and enforcing the Consent Decree and Remedial Plan.

Respectfully submitted,

Dated: December 14, 2018

COOLEY LLP

/s/ Jessica Valenzuela Santamaria

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*Attorneys for Plaintiffs*

Dated: December 14, 2018

PRISON LAW OFFICE

/s/ Donald Specter

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*Attorneys for Plaintiffs*

Dated: December 14, 2018

KENDALL DAWSON WASLEY

/s/ Kendall Dawson Wasley

KENDALL DAWSON WASLEY (252294)

*Attorney for Plaintiffs*

**ATTESTATION**

I hereby attest that I have on file the holograph signature of the signature indicated by a “confirmed” signature (/s/) within this e-filed document.

Dated: December 14, 2018

COOLEY LLP

/s/ Jessica Valenzuela Santamaria  
Jessica Valenzuela Santamaria